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1 RECORD OF ORAL HEARING
2
3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte G. GARY GOCHANOUR
11

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13 Appeal 2009-002934
14 Application 10/686,298
15 Technology Center 3700
16

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18 Oral Hearing Held: September 22, 2009
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21 Before JENNIFER D. BAHR, MICHAEL W. O'NEILL, and FRED A.
22 SILVERBERG, *Administrative Patent Judges*
23

24 ON BEHALF OF THE APPELLANTS:
25

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33 ALSO PRESENT:
34

35 Gary Gochanour, Inventor
36

37 The above-entitled matter came on for hearing on Tuesday, September 22,
38 2009, commencing at 9:06 a.m., at the U.S. Patent and Trademark Office,
39 600 Dulany Street, Alexandria, Virginia, before Jennifer O'Connor, Notary
40 Public.

P R O C E E D I N G S

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3 JUDGE BAHR: Good morning.

4 MR. POSE: Good morning.

5 JUDGE BAHR: You probably can't see our name plates, so let me
6 introduce who's here. My name is Jennifer Bahr. We've got Fred Silverberg
7 and Mike O'Neill here.

8 MR. POSE: Nice to meet you.

9 JUDGE BAHR: And we understand this is the appeal 2009-2934,
10 002934.

11 MR. POSE: Yes, 002934.

12 JUDGE BAHR: Okay. You can begin whenever you're ready.

13 MR. POSE: Okay. We're on the record then?

14 JUDGE BAHR: Yes.

15 MR. POSE: All right. I'm John Pose, attorney of record. I want to
16 thank you for taking the time to meet with us using this particular mode of
17 communication. I have a pleasant surprise for you. Not only do I have the
18 inventor with me, Dr. Gary Gochanour, but he brought some apparatus to
19 show you. I hope that's okay. It's a prototype of the invention we're going
20 to be talking about today.

21 JUDGE BAHR: That's fine.

22 MR. POSE: So I'm going to give the show to him for a few minutes.

23 DR. GOCHANOUR: Okay. So here's the apparatus. It's a dispensing
24 device for a hand covering. Let's zero in on that. This would hang on the
25 wall of a restaurant or food handling area. Here's a roll of plastic film
26 positioned here. There's about 500 feet of plastic film on this tiny roll.

1 There's some adhesive on the outwardly facing surface of the film, and I'm
2 sticking it to my fingertip so that you can see that there's adhesive there.

3 On the other side, around behind the film, there's no adhesive. Also
4 positioned behind the film will be like a nerf-ball shaped piece of foam that's
5 retained by a little fastener. The user cranks out a piece of this plastic film
6 and presses their hand against the adhesive side of the film, and then
7 squeezes and tears off a piece, and then they have a hand covering on. It
8 covers the fingertips and the fingernails. When they're finished, when the
9 user is finished, just peel the piece off and discard it and then it's ready for
10 another piece to come down for another user.

11 MR. POSE: So the way that the new piece advances is there's a set of
12 interlocking chains in this case on either side pinching this film, and we've
13 got some other --

14 DR. GOCHANOUR: To represent or to illustrate the interlocking
15 chain mechanism that is positioned on either side, right and left of the film, I
16 have this device put together; a fairly crude device. But it shows how the
17 two chains come together and pinch the film and draw the film off of that
18 roll, and bring the film into position. You can see the pinch point right here.

19 MR. POSE: Can I ask questions?

20 DR. GOCHANOUR: Yeah.

21 MR. POSE: Okay.

22 DR. GOCHANOUR: I'm not sure if you can see this, how well you
23 can see that chain mechanism functioning.

24 MR. POSE: That's as far as I can see that.

25 DR. GOCHANOUR: Okay. There's two chains, and is it --

1 JUDGE BAHR: We can see the two chains. One's offset a little bit
2 relative to the others.

3 MR. POSE: Yeah, they're offset.

4 DR. GOCHANOUR: Yes, okay. Very good. So that's exactly what
5 is present on the right hand side and the left hand side of the dispenser.
6 There's a set of interlocking chains on either side that pinches the plastic
7 film and draws the film to the position that the user desires.

8 MR. POSE: Okay. So if I could now speak to the rejection. We have
9 two sets of claims, both based on independent claims, one on Claim 1, one
10 on Claim 7. As it's briefed, the dependent claims stand or fall with the
11 independent claims. I'll just begin with Claim 1. We have an anticipation
12 rejection here. Okay, 102. I mean it's a strict standard. There's no
13 obviousness. Well, maybe some claims not briefed had a 103, but we're
14 talking about Section 102.

15 If I could start with the last limitation, this idea of a set of interlocking
16 chains or opposing belts on either side of the housing. This is what you just
17 saw, and I guess our argument is that we seek a reasonable interpretation of
18 this limitation and other ones in the claims. Okay, this case has been
19 pending for years. It's the Examiner's position that the word "chain" could
20 mean a lot of things. She uses dictionary definitions in support of these
21 arguments.

22 But we believe that our arguments are stronger. I mean chain has a
23 specific meaning, and I mean I think it's well-settled that if there's ambiguity
24 in a claim, where do you go? Go to the specification and find out what the
25 applicant meant, and you'll see that we mean, by chain we mean a chain, all

1 right. The Examiner claims that a row of holes in a piece of paper could also
2 be a chain, but we disagree.

3 I mean it seems to be stretching a definition to the breaking point.
4 Holes are not items, as the Examiner points out, and we believe that this
5 interpretation just doesn't follow the one that the person of skill in the art
6 would adopt. Again, if you look at the specs, if you want to know, I mean
7 that's what we mean. It's not as though we can now go forward and sue
8 somebody who has paper with a roll of sprocket holes, okay.

9 The record is very comprehensive and robust now. Because of file
10 wrapper estoppel and other issues, we can't go backward and regain this kind
11 of subject matter. We don't want it. We want the reasonable interpretation
12 that's actually being used here. If you look at the Examiner's answer,
13 beginning at page six, at the bottom of page six, the Examiner goes to great
14 lengths to support the idea that a chain could be a row of holes in a piece of
15 paper. This is what the Stevenson reference teaches, all right.

16 But, you know, why does it take so much verbiage in support of this.
17 I mean it either reads on it or it doesn't, and it just plain doesn't. I mean the
18 Examiner says that we only use a singular definition for our own selfish
19 purposes. It's not really true. In response to the Examiner's Answer, I did a
20 very, very quick search of patents, and I put interlocking chains as a search
21 term, and I found a patent that's of record now, and submitted before you,
22 and to this -- the Stork reference is the inventor.

23 If you look at page four of that, it's almost exactly the same
24 configuration of interlocking chains that we're talking about today. The
25 point is that whereas we found some actual support, apart from our spec; I
26 mean that's the primary place to go, not only do we find another secondary

1 reference which shows the same thing; the Examiner has really shown
2 nothing other than speculation about what holes in a piece of paper might
3 mean.

4 I want you all also to notice that in making the argument, the
5 Examiner drops terms of our claims, all right. On page six, she states that
6 Stevenson discloses a chain, singular, because it could mean something that
7 confines or restrains or is associated. But our claim has more than the word
8 chain in it. It has a set of interlocking chains, plural, all right? Those
9 additional words are not addressed, and in fact they're sort of dropped by the
10 Examiner. She goes on to say that -- she initially says that Stevenson
11 discloses interlocking chains, and then she goes on to say that he discloses
12 many sets of chains, in an alternative argument that we have trouble, frankly,
13 understanding.

14 But in the end, she says that Stevenson discloses a chain, singular,
15 basically because of the dictionary definition. But you have to look at all of
16 the terms of the claim. I mean a set of chains means more than one. Even if
17 you were to interpret holes in a piece of paper as a chain, which is -- I mean
18 I can't do it. I can't do it. But even if you can bring yourselves to do it,
19 there's only one of those things, whatever that might be.

20 Now again, 102 rejection here anticipated, right? The limitation
21 actually reads "a set of interlocking chains or opposing belts on either side of
22 the housing." Now the Examiner states that that could mean on only one
23 side. If that was the only language in the claim, she might have an
24 argument. However, if you look at the claim in its totality, in other words,
25 what the invention is, the claim as a whole, we first define a roll of film to

1 receive -- I'm sorry, a housing to receive a roll of film having opposing side
2 edges, plural.

3 In other words, I mean it's a long web of material having opposing
4 side edges. I mean that's pretty clear for anyone to understand. Then when
5 we get to the set of interlocking chains, they are on either side of the
6 housing, but it goes on, the claim goes on to say "to retain these side edges,"
7 plural. There's only one way to interpret this. It has to be on both sides of
8 the housing.

9 Now I mean you can ask the question well look, why didn't you
10 amend this during prosecution? Why didn't you make it clear? Two
11 reasons. First of all, we think it's clear now. I mean there is no ambiguity.
12 Why add things that are unnecessary, and secondarily, this has been going
13 on for so long that frankly we didn't want to spend any more time and
14 money? We wanted to bring this case to your attention.

15 So in summary, despite the Examiner's arguments that this is -- that
16 these are purely functional limitations, they're not, okay? A set of
17 interlocking chains on either side of the housing, that's structural, all right.
18 Now you could say "to retain" begins the functional argument, but in
19 context, a set of interlocking chains, that in and of itself is a structural
20 limitation that the prior art doesn't have. Therefore, that alone defeats *prima*
21 *facie* anticipation.

22 With regard to a form to be grasped by a user, again I direct you to the
23 Examiner's arguments, primarily on page nine, for example, of the Answer.
24 The interpretation is just not a reasonable one. The Examiner states that,
25 you know, the glove itself of Stevenson could be the form that is grasped

1 through the film. I guess. I mean, you know, but it just doesn't pass the
2 reasonable test.

3 If you look at the drawings and the disclosure of Stevenson, you have
4 to reach behind this thing, grab the glove that you're supposed to put on your
5 hand through the film, and use the backing sheet itself as a hand covering. It
6 just doesn't make sense. It's just taking our disclosure, our invention and
7 using it against us, with a reference that is in the same art. I mean, you
8 know, it's hand covering art, sterile gloves, no question about it. But it
9 doesn't anticipate. It's just plain and simple, it does not anticipate.

10 With regard to the adhesive, there again, all right. Let's read the
11 claim. Claim 1, all right, "a housing to receive a roll of film." In fact, hang
12 on a second. The adhesive is not in Claim 1, so I'll move to Claim 7, all
13 right. I'm going to argue it anyway. The difference between Claim 7 and
14 Claim 1 is that the roll of film is actually set forth, all right. As you can see
15 in Claim 1, it's the housing to receive it. In Claim 7, it's actually positively
16 set forth.

17 JUDGE O'NEILL: Excuse me, excuse me.

18 MR. POSE: Yes?

19 JUDGE O'NEILL: So the roll of film is not positively recited in
20 Claim 1?

21 MR. POSE: You know, I'm not sure. I mean --

22 JUDGE O'NEILL: Well, you just said that it is positively recited in
23 Claim 7, and I'm just curious.

24 MR. POSE: That's true. It is positively recited in Claim 7. In Claim
25 1, the housing is positively recited. To the extent that it's configured to
26 receive this roll of film, there are limitations in there, all right. But --

1 JUDGE O'NEILL: Well that just means the housing is shaped to
2 receive the film.

3 MR. POSE: Yeah, I would agree with you, and that's done for a
4 reason, all right. I mean the roll of film is going to probably -- I mean it's
5 going to be sold separately. Clearly, the housing is going to be mounted on
6 a wall somewhere and stay there for a long time, and they're going to order
7 replacement rolls.

8 You know, as far as the Inventor is concerned, he doesn't want
9 somebody to infringe just because they -- or not infringe because they
10 provide a housing with or without a roll of film. So that's why the claims are
11 written in that way. But getting to the adhesive, all right, again the
12 Examiner's interpretation is that this little strip is labeled in Stevenson, it's
13 labeled 25 on Figure 4.

14 I mean yes, Stevenson calls it an adhesive, all right. But that adhesive
15 is used. It has a purpose. It sticks the glove onto the backing sheet. Now
16 our argument is that once you do that, the adhesive goes away. I mean it's
17 been used up. I mean that's the expression we use in the case, and I think it's
18 still a reasonable way to look at it. If you have a stamp, the old or even the
19 new kind of stamps that you don't have to lick, all right, before you put it on
20 an envelope, I mean there's an outwardly exposed adhesive there. I mean
21 that's how it works.

22 But once it's stuck down, I don't think anybody reasonable would say
23 that there's an outwardly -- let's see. I don't think anyone reasonable would
24 say that there's an adhesive surface left over, regardless of its use. The claim
25 says to be used as a hand covering. If the form is configured -- in Claim 7
26 again. If the form is configured to be grasped through the film with the

1 adhesive surface facing outwardly, in Stevenson there is no adhesive surface
2 anymore.

3 I mean there may have been at one time in production before these
4 things were put together, but once this thing was done and once this patent
5 was issued and once it could be interpreted by reasonable people, that little
6 strip bonding, the glove to the backing surface, is a process long gone. It's
7 no longer exposed, can't be used anymore. There's no disclosure about what
8 happens to that glove when it gets torn off the backing sheet, whether a little
9 piece of backing sheet goes with it or not.

10 But the fact is once the stamp is put down on the envelope, there's not
11 an adhesive there anymore. You have to peel it off. You take a part of the
12 envelope with it. It's just not useful. So the idea of an adhesive surface
13 facing outwardly, such that the film temporarily adheres to a user's hand, is
14 not, just not met by this reference. Claim 7, like Claim 1, is also not
15 anticipated under 102 by this reference and this reference alone.

16 JUDGE O'NEILL: So could you repeat your argument why the set of
17 interlocking chains could not be interpreted as the Examiner has interpreted
18 it, with a set of -- just a set of holes or perforations on the side of the film?
19 Because it says either side. It says either -- see either the left side or the
20 right side.

21 MR. POSE: But it has to retain these side edges of the film. I mean
22 there has to be -- it has to be both. If I say to you "It's a lovely street. There
23 are elm trees on either side," all right. It's not as though the word either
24 always means one or the other. It often means both. It's contextual, all
25 right.

1 JUDGE O'NEILL: But do you say the film is not positively claimed
2 in Claim 1?

3 MR. POSE: I'm not sure. I mean I think it's claimed -- I think that the
4 interlocking chains, being able to retain both side edges of the film, that's,
5 you know, I mean that's a positive recitation that does read on the film that is
6 received by the housing. I mean you decide, okay. Certainly it is in Claim
7 7.

8 JUDGE O'NEILL: So you're asking us to give you a claim
9 construction of this claim at this point?

10 MR. POSE: Well, I would imagine that you'll give a claim
11 construction when you render your opinion. I mean that's part of what this is
12 all about, right? I mean what I'm asking is for words in a claim to not be
13 ignored. That's what we're asking for. We're asking for words in a claim to
14 be reasonably interpreted.

15 If you look at the Examiner's Answer once again, the very last
16 paragraph -- well, this has to do with the adhesive. "Applicant is claiming a
17 form grasped through the film, the adhesive faces in an outward direction,
18 allowing the film to adhere to the user's hand." It's pretty clear that the
19 Examiner knows what the invention is, and not only that, what we're trying
20 to claim here. It's pretty clear, all right?

21 That's all we're asking. As far as claim construction is concerned,
22 yeah, we're asking for claim construction. We're asking for a reasonable one
23 in context, and in view of the specification and the invention overall. That's
24 right. Now getting back to your question about why can't we interpret a row
25 of holes in a piece of paper as a chain, you know, it's hard to even begin. I
26 mean I'm sorry, but when things -- when interpretations get so far afield,

1 we're put in an odd spot of having to defend something that seems
2 indefensible, all right.

3 If you tap 100 people on the street and show them a piece of paper
4 with a row of holes in it, and ask them does this look like a set of
5 interlocking chains to you, I mean how many would say "Oh yeah." I mean
6 none would. That's all we're asking. It just doesn't make any -- you said
7 why can't you call a bunch of holes or perforations chains? Because you
8 didn't. You called them holes or perforations for a reason. That's what they
9 are.

10 I mean I think we've got to call an apple and apple and an orange an
11 orange. I can't really answer your question because the interpretation is
12 frankly so unreasonable it's hard to start. We did our best in the paper work.

13 JUDGE BAHR: I think we understand your position. I don't have
14 any further questions. Thank you. We'll take this under advisement.

15 MR. POSE: Thank you. Thank you very much.

16 (Whereupon, at 9:28 a.m., the proceedings were adjourned.)